

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROTHY'S, INC.,

Plaintiff,

v.

BIRDIES, INC.,

Defendant.

Case No. [21-cv-02438-VC](#) (AGT)

**DISCOVERY ORDER**

Re: Dkt. Nos. 96, 97

1. In addition to the documents that Birdies has agreed to produce by February 4, 2022, *see* *dk.* 96 at 4; *dk.* 96-4, Kaempf Decl. ¶ 2, Birdies must produce, by February 7, any documents in its possession, custody, or control that summarize, describe, or refer to any of Rothy's knit shoes. These documents are relevant to the invalidity arguments that Birdies has made in its motion for summary judgment.

2. In addition to the ESI that Birdies has agreed to produce by February 4, *see* *dk.* 97 at 4; *dk.* 97-6, Kaempf Decl. ¶ 2, Birdies must produce, by February 7, any ESI for Marisa Sharkey or Bianca Gates that is responsive to the searches proposed by Rothy's, *see* *dk.* 97-4 at 2, with the exception that Birdies need not run search no. 4, which relates to a collaboration that allegedly post-dates the launch of the accused product, *see* *dk.* 97 at 5. Sharkey and Gates are scheduled to be deposed next week. After this order is entered, if a deposition of any other Birdies' custodian is scheduled for a date before the deadline for Rothy's to oppose summary judgment, Rothy's may seek additional ESI related to that custodian.

3. Birdies need not produce documents regarding the manufacture, fabrication, or assembly of the Blackbird, the accused shoe. Those documents aren't needed at this stage in the case. Birdies has agreed to produce documents regarding the engineering, design, and development of

the Blackbird, *see* dkt. 96 at 5, and those documents are more directly related to Birdies' invalidity and non-infringement arguments.

This order is without prejudice to Rothy's renewing requests for discovery rejected here if summary judgment is denied.

**IT IS SO ORDERED.**

Dated: February 3, 2022

A handwritten signature in black ink, appearing to read 'Alex G. Tse', written over a horizontal line.

Alex G. Tse  
United States Magistrate Judge